ALEXANDER L. STEVAS
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No. 82-66

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

STANLEY C. MAZALESKI,

Petitioner,

v.

JON R. MAY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

STANLEY C. MAZALESKI, *PRO SE*
3931 Sugarloaf Drive
Monrovia, Maryland 21770
(301) 831-9424

Washington, D.C. • THIEL PRESS • (202) 638-4521

QUESTIONS PRESENTED

1. Is it proper for the court to rule in favor of summary judgment when material facts and law are in serious dispute?

2. Whether a supervisor was acting within the parameters of his official duties when he made a statement to the press concerning a former subordinate who was discharged from federal employment approximately four years earlier is a central issue. Did the malicious and untrue statements by the supervisor have absolute immunity as asserted by the government through *Barr v. Matteo* (1959)?

3. Because of these malicious and untrue statements then sheltered under the umbrella of absolute immunity through *Barr v. Matteo* (1959), petitioner has suffered unfairly loss of property and liberty rights, with an unwarranted invasion of privacy, guaranteed Fourth Amendment right violated and loss of free speech First Amendment guaranteed right. How do such violations comport with fair play and Constitutional rights guarantees?

4. The very recent U.S. Supreme Court rulings in *Nixon v. Fitzgerald* (No. 79-1738, decided June 24, 1982) and *Harlow v. Fitzgerald* (No. 80-945, decided June 24, 1982), giving absolute immunity only to the U.S. President from damages liability predicated on his official acts, with the President's absolute immunity extending to all acts within the "outer perimeter" of his office, with lesser officials given only qualified immunity, have superseded as the standard, instead of *Barr v. Matteo* (1959). What significant effect does this new and most compelling standard of absolute immunity for the President *only*, have on reversing the February 3, 1982

opinion of the U.S. Court of Appeals for the Fourth Circuit affirming the lower District Court's summary judgment in favor of Respondent and the government, and violating Petitioner's Constitutional guaranteed free speech and right to privacy, and compensatory and punitive damages denied based on the *Barr v. Matteo* (1959) standard?

5. What effect does the new U.S. Supreme Court rulings on absolute immunity, for the President only, have on the millions of federal workers, past, present, and future, who under the current ruling by the U.S. Court of Appeals for the Fourth Circuit have set a dangerous precedent to First and Fourth Amendment rights which under their February 3, 1982 Opinion not only denies these guaranteed Constitutional rights, but forecloses liberty and property rights also guaranteed under the U.S. Constitution?

6. In the very recent U.S. Supreme Court ruling in *United States Department of State et al. v. Washington Post* (No. 81-535, decided May 17, 1982) the State Department's denial of the request should have been sustained upon a showing that release of the information would constitute a clearly unwarranted invasion of personal privacy, as the similar situation in case at bar. How does this comport with the violation of right to privacy experienced by petitioner, and also millions of other federal workers in a similar situation? Does this comport with equitable law?

7. Were citizen/Petitioner's state rights violated when the government removed the case at bar from the State judicial system, and put in under *Barr v. Matteo* (1959) in the Federal judicial system?

8. Did the Court of Appeals for the Fourth Circuit adjudicate an extremely dangerous precedent setting bad

law, directly violating every federal worker's free speech and right to privacy, Constitutionally guaranteed rights?

9. Petitioner seeks a *Bivens* remedy for punitive and compensatory damages, for redress and to be made "whole again." Do the new U.S. Supreme Court rulings cited above allow Petitioner these damages resulting from slander and libel, and allow full free speech First Amendment, and privacy Fourth Amendment guaranteed Constitutional rights for the millions of other federal employees also?

10. There was no written Order on April 14, 1982 denying Petitioner's Suggestion for Rehearing En Banc. Was there any lack of judicial due process and equal protection under the law by the Court?

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IN THE

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STANLEY C. MAZALESKI,

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v.

JON R. MAY,

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner respectfully requests that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on February 3, 1982.

OPINION BELOW

Of primary importance in reference to the Opinion is the question posed in the letter by Peggy L. McCulloch, Senior Deputy Clerk to Elizabeth Trimble, Esq., dated June 8, 1981, and reproduced here as Appendix A.

The opinion of the Court of Appeals for the Fourth Circuit has not been reported, is listed as "Unpublished", and is reproduced as Appendix B. The Court of Appeals for the Fourth Circuit granted a Motion for Extension of Time Under Extraordinary Conditions to File Petition for Rehearing and Suggestion for Rehearing En Banc, on February 13, 1982, and is reproduced here as Appendix C.

On February 22, 1982 Petitioner was notified by letter from Chief Deputy Clerk (Mr.) Carol R. Lemon that an extension was granted to be in the hands of the Clerk on March 14, 1982, reproduced as Appendix D, with enclosed Order That This Motion Is Granted (for the Court by direction of William K. Slate, II, Clerk), filed February 22, 1982, and reproduced as Appendix E.

On March 12, 1982 Petitioner hand delivered his Petition for Rehearing and Suggestion for Rehearing En Banc, reproduced as Appendix F. On April 14, 1982 an Order, in that "It is adjudged and ordered that the petition for rehearing is denied. . . ." (for the Court by William K. Slate, II, Clerk), and is reproduced as Appendix G.

On May 10, 1982 Petitioner wrote Mr. Slate, Clerk, about Petitioner's concern that no Order was issued *denying* Petitioner's Suggestion for Rehearing En Banc. Petitioner's May 10, 1982 letter to William K. Slate, II, Clerk, is reproduced as Appendix H. Mr. Scott A. Richie, Deputy Clerk, responded to Petitioner's May 10, 1982 letter instead of Mr. Slate. This letter is reproduced as Appendix I.

Still not getting an answer that may be correct on *no Order* affirming or denying Petitioner's Suggestion for

Rehearing En Banc, Petitioner again wrote Mr. William K. Slate, II, Clerk, that there may be a lack of judicial Due Process and Equal Protection for Petitioner in adjudicating this case in regard to *no Order* denying Petitioner's Suggestion for Rehearing En Banc. Petitioner's July 6, 1982 letter on this matter addressed to Mr. Slate, Clerk, is reproduced as Appendix J.

JURISDICTION

The petition for rehearing was denied April 14, 1982 and Suggestion for Rehearing was allegedly denied but *no Order* specifically showed this on April 14, 1982. Petitioner moved forward in this situation, and this petition for writ of certiorari was filed within 90 days of the date of denial of the petition. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment to the United States Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievances.

Fourth Amendment to the United States Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause,

supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment to the United States Constitution:

". . . nor be deprived of life, liberty, or property, without due process of law. . . ."

Sixth Amendment to the United States Constitution:

". . . and to have the assistance of counsel for his defense. . . ."

Eighth Amendment to the United States Constitution:

". . . nor cruel and unusual punishment. . . ."

Tenth Amendment to the United States Constitution:

The Powers not delegated to the United States by the Congress, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Fourteenth Amendment to the United States Constitution:

Section 1. All Persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which abridges the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Title 5, United States Code *et seq.*

Title 18, United States Code *et seq.*

Privacy Act of 1974 and as amended

OSHA Act of 1970

Civil Rights Act of 1964

Civil Service Reform Act of 1978

STATEMENT OF THE CASE

The action arises out of a story printed in the *Washington Weekly*, a newspaper in general circulation in the area of the District of Columbia on February 27, 1979. The article was essentially about a four year struggle to get Constitutional protection, equal rights, for some 6,000 Commissioned Officers, United States Public Health Service, and directly involved was a Class Action against Secretary Joseph A. Califano before the U.S. Court of Appeals for the District of Columbia. The news story shows President and Mrs. Carter's indifference to human rights for scientists and citizens who dare speak out against waste and corruption in government. The *Washington Weekly* story was very embarrassing to the President, his wife, the White House, and members of Congress. Job reprisal at EPA, Petitioner's place of employment, was indicated and, immediately thereafter, the electronic surveillance started on Petitioner as a result of petitioner's allegations that he had been fired from his job at the National Institute for Occupational Safety and Health (NIOSH) in retaliation for having publicly criticized NIOSH officials, and having publicly charged his former supervisor, the respondent in this case, Dr. Jon R. May, with official misconduct. The article quoted the respondent as replying to Dr. Mazaleski's allegations by asserting as follows: "The whole thing is riduculous. The issues he raised against NIOSH

have been totally phony. I saw his performance from December, '74 until his termination in March '75. He was a very lazy, non-productive individual. I felt it was my responsibility to the taxpayers and factory workers to press charges for dismissal." Petitioner had already won a First Amendment Free Speech claim against the Public Health Service, DHEW, in *Mazaleski v. Truesdell et al.*, 75-1817, U.S. Court of Appeals for the District of Columbia, with Jon May also a defendant. Petitioner is searching for a lawyer, and is waiting to go to trial "de novo" on the free speech claim against NIOSH.

The *Washington Weekly* article was written by one Pamela Lowe, a paid reporter, and the statement of Dr. May was allegedly made to her over the telephone approximately one week before the article appeared in print.

The Petitioner had been involuntarily removed, as a Commissioned Officer, from his employment for "blowing the whistle" on NIOSH waste and mismanagement concerning carcinogenic and other dangerous chemicals. Petitioner's case was heard by the Honorable Judge John J. Sirica, and Judge Sirica ruled in favor of summary judgment for the government, which included defendant/respondent Dr. May. This was done on July 10, 1975, but Judge Sirica's Opinion was overturned April 26, 1977 by the U.S. Court of Appeals for the District of Columbia Circuit in 75-1817 on a free speech, First Amendment Claim, and Administrative Error by the Government. That termination will now be contested in the Federal courts accordingly. Petitioner has lost many lawyers along the way in two separate litigations, some corrupt union lawyers, one being a former General Counsel and Assistant Attorney General in the Johnson Administration. Petitioner, however, hard the struggle

has been, and how long the road to find justice has been, has never waived his right to an attorney to litigate his cases on Constitutional law.

In continuation, the respondent has asserted that the doctrine of official immunity provides him absolute immunity from common law action for defamation of character, with malice, arising out of his performance as a Federal official acting allegedly within the scope of his official duties. The respondent's motion for summary judgment on this issue was denied earlier because of the existence of a dispute over the scope of the defendant's official duties.

In the very recent U.S. Supreme Court decisions of *Nixon v. Fitzgerald* (No. 79-1738, decided June 24, 1982) decimates respondent's and the government's reliance on *Barr v. Matteo*, 79 S. Ct. 1335 (1959).

The U.S. Supreme Court recently held in *Nixon v. Fitzgerald* (No. 79-1738, decided June 24, 1982) that ". . . The President's absolute immunity extends to all acts within the 'outer perimeter' of his duties of his office. . . ." *Only* the *President* was given absolute immunity, *not lesser officials*, including respondent. Again, most recently, in *Harlow et al. v. Fitzgerald* (No. 80-945, decided June 24, 1982) the U.S. Supreme Court held that:

> 1. Government officials whose special functions or constitutional status requires complete protection from suits for damages—including certain officials of the Executive Branch, such as prosecutors and similar officials, see Butz v. Economou, 438 U.S. 478, and the President Nixon v. Fitzgerald, ante, p. ___ are entitled to the defense of absolute immunity. However, executive officials in general are usually entitled to only qualified or good-faith

immunity. The recognition of a qualified immunity defense for high executives reflects an attempt to balance competing values: not only the importance of a damages remedy to protect the rights of citizens, but also the need to protect officials who are required to exercise discretion and the related public interest in encouraging the vigorous exercise of official authority. Scheuer v. Rhodes, 416 U.S. 232. Federal officials seeking absolute immunity from personal liability for unconstitutional conduct must bear the burden of showing that public policy requires an exemption of that scope. Pp. 5–7.

2. Public policy does not require a blanket recognition of absolute immunity for Presidential aides. Cf. Butz, supra. Pp. 7–12.

(a) The rationale of Gravel v. United States, 408 U.S. 606—which held the speech and Debate Clause derivatively to the "legislative acts" of a Senator's aide that would have been privileged if performed by the Senator himself—does not mandate "derivative" absolute immunity for the President's chief aides. Under the "functional approach to immunity law, immunity protection extends no further than its justification warrants. Pp. 8–10.

(b) While absolute immunity might be justified for aides entrusted with discretionary authority in such sensitive areas as national security or foreign policy, a "special functions" rationale does not warrant a blanket recognition of absolute immunity for all Presidential aides in the performance of all their duties. To establish entitlement to absolute immunity, a Presidential aide first must show that the responsibilities of his office embrace a function so sensitive as to require a total shield from liability. He then must demonstrate that he was discharging the protected function when performing the act

for which liability is asserted. Under the record in this case, neither petitioner has made the requisite showing for absolute immunity. However, the possibility that petitioners, on remand, can satisfy the proper standards is not foreclosed. Pp. 11-12.

3. Petitioners are entitled to application of the qualified immunity standard that permits the defeat of insubstantial claims without resort to trial. PP. 13-20.

(a) The previously recognized "subjective" aspect of qualified or "good faith" immunity—whereby such immunity is not available if the official asserting the defense "took the action with the malicious intention to cause a deprivation of constitutional rights or other injury," Wood v. Strickland, 420 U.S. 308, 322—frequently has proved incompatible with the principle that insubstantial claims should not proceed to trial. Henceforth, government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate "clearly established" statutory or constitutional rights of which a reasonable person would have known. Pp. 14-19.

(b) The case is remanded for the District Court's reconsideration of the question whether respondent's pretrial showings were insufficient to withstand petitioner's motion for summary judgment. Pp. 19-20. Vacated and remanded. Powell, J., delivered the opinion of the Court, in which Brennant, White, Marshall, Blackmun, Rehnquist, Stevens, and O'Connor, JJ., joined. Brennan, J., filed a concurring opinion, in which Marshall and Blackmun, JJ., joined. Brennan, White, Marshall, and Blackmun, JJ., filed a separate concurring statement. Rehnquist, J., filed a con-

curring opinion. Burger, C.J., filed a dissenting opinion.

In regard to privacy, Fourth Amendment rights in the very recent judgment by the Supreme Court of the United States in the *U.S. Department of State et al. v. Washington Post Co.* (No. 81-535, decided May 17, 1982), that Court held:

> The citizenship information sought by respondent satisfies the "similar files" requirement of Exemption 6, and hence the State Department's denial of the request should have been sustained upon a showing that release of the information would constitute a clearly unwarranted invasion of personal privacy. Although Exemption 6's language sheds little light on what Congress meant by "similar files," the legislative history indicates that Congress did not mean to limit Exemption 6 to a narrow class of files containing only a discrete kind of personal information, but that "similar files" was to have a broad, rather than a narrow, meaning. Exemption 6's protection is not determined merely by the nature of the file containing the requested information, and its protection is not lost merely because an agency stores information about an individual in records other than "personnel" or "medical" files. Pp. 3-8, ___ U.S. App. D.C. ___, 647 F.2d 197, reversed and remanded. Rehnquist, J., delivered the opinion of the Court, in which Burger, C.J., and Brennan, White, Marshall, Blackmun, Powell, and Stevens, JJ., joined. O'Connor, J., concurred in the judgment.

Petitioner's review of the most recent U.S. Supreme Court decisions regarding absolute immunity only for the President, and "good-faith" qualified immunity, along with their recent decision to protect the privacy of personnel, medical and other files kept and maintained

by an agency to not allow a clear unwarranted invasion of personal privacy under Exemption 6 of the Freedom of Information Act. There is a close analogy to these cases and petitioner's case at bar in material fact, law, and merits, which if the three U.S. Supreme Court cases herein cited above, with their reasoning, conclusions, and judgments as rendered recently, projects petitioner's claims to Constitutional guarantees of free speech, right to privacy, due process, equal protection in judicial adjudication, freedom from duress, cruel and unusual punishment, violation of citizens' states rights, deprivation of liberty and property rights due to respondent's malicious and defamatory statements made to a *Washington Weekly* reporter in February 1979 constituting slander, and malicious and defamatory statements in the *Washington Weekly* news story constituting libel about petitioner's speaking out as a scientist, not working with NIOSH, not under the supervision of respondent for some four years, and speaking out on public health, and related litigation concerning the putlic good. Petitioner had the Constitutional guarantees cited, respondent made malicious statements as prima facia evidence in the record in case at bar shows with a preponderance of material facts and merit supporting petitioner's claims for compensatory and punitive damages. Respondent was clearly not acting in the public good as the record shows, improperly had the government move this case from a State judicial system to a Federal, improperly shield himself behind *Barr v. Matteo* (1959) for illicit purposes, used government funds, attorneys and the power of the U.S. Attorney's Office for illegitimate purposes, to slander, libel and defame petitioner professionally and in the community and ruin the petitioner's good family name and reputation as physicians, scientists, combat veterans, dentists, school teachers and good citizens and

public servants, well knowing that petitioner did not have the funds or assistance legally that respondent had, all at the public and taxpayer's expense. Petitioner is a well known "whistleblower" and Constitutional reformer, with concern only for the public good, honest government, oath to the Constitution and God. Respondent continually used the "Big Lie Technique"; that is, to tell a lie long enough, that it will be belived, and ultimately destroy the prey, petitioner.

Respondent Jon R. May did not have the public good at heart, and was only trying to save himself since he is a defendant in *Mazaleski v. Truesdell et al.*, and has committed perjury in that case and this case at bar. The government, respondent, and the U.S. Court of Appeals for the Fourth Circuit have failed to answer the most important question as raised in the June 8, 1981 letter from William K. Slate, II, Clerk, by Peggy L. McCulloch, Senior Deputy Clerk to Elizabeth Trimble, Assistant U.S. Attorney, reproduced as Appendix A herein, to wit:

> Whether a supervisor was acting within the parameters of his official duties when he made a statement to the press concerning a former subordinate who was discharged from federal employment approximately four years earlier.

Petitioner answered this question in Appellant's Reply to Appellee's Memorandum of Law of June 26, 1981. Petitioner didn't work for respondent for approximately four years, was in another agency, was legitimately pursuing litigation, using free speech as a scientist for the public good and interest. Petitioner has been directly involved in initiating a General Accoutning Office (GAO) investigation at NIOSH and the Department of Labor's Occupational Safety and Health Administration (OSHA), with significant waste, mismanagement reported in the

resulting GAO report, May 10, 1977, HRD-77-71, which is a permanent part of this Court's records. Only the truth was spoken by petitioner throughout these many years of struggle and sorrow. The public interest and good is not being served and the record before the lower courts shows document after document of prima facia evidence on NIOSH and OSHA waste, mismanagement, and cover-up. In the Judgment of February 3, 1982, that Court ignored the evidence before them, did not answer the most important question, whether a former supervisor of some four years earlier could hound, defame, use character assassination with malice in the press, to cover up for the very waste, mismanagement, he, and a close-knit group, mainly Commissioned Officers, Public Health Service, were directly responsible for, all at the detriment of the public good and interest. The Judgment of February 3, 1982 (Appendix B) stamped "Unpublished" cannot stand, since respondent, in light of the *Nixon v. Fitzgerald* U.S. Supreme Court Judgment, June 24, 1982, giving absolute immunity only to the President. The U.S. Court of Appeals gave absolute immunity to respondent, because of his malice, and violation of petitioner's guaranteed free speech and privacy rights. The court acted in error, and should be overridden in their Feburary 3, 1982 judgment, not only because of the most recent U.S. Supreme Court rulings on absolute immunity, invasion of privacy, but also because it would be ludicrous to allow millions of federal employees to be hounded, have their Constitutional rights violated, blackballed by former supervisors, years later, with a severe loss of liberty and property rights by direct and illegal abuse of power, personal grudges, insecurities, jealousies, and what have you. Their February 3, 1982 Opinion is bad law and precedence setting

of a very dangerous nature which erodes the very base of our judicial system and Constitution.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals for the Fourth Circuit strikes irreparably at the Constitutional guarantees of free speech, privacy, duress, states rights, due process and equal protection in the judicial arena and the Opinion of February 3, 1982, if left standing, could ultimately destroy the Federal employment system, and seriously undermine the workings of the government, the public good and interest, and ultimately erode the U.S. Constitution beyond belief, and if not put a chill throughout government service, not for the good of the country, and actually destroy our Federal service. Petitioner feels that federal service will be subverted beyond saving, with great harm to the public interest and good. Petitioner believes that the most recent Supreme Court rulings on invasion of privacy, and absolute immunity only for the President is the new and compelling standard, that overturns *Barr v. Matteo* (1959) absolute immunity so improperly awarded respondent.

CONCLUSIONS

This Court should grant certiorari based on new law adjudicated in *Nixon v. Fitzgerald* (1982), *Harlow et al. v. Fitzgerald* (1982), and *U.S. Department of State et al. v. Washington Post Co.* (1982) by the U.S. Supreme Court in May and June 1982, that petitioner has presented a very rational basis in fact and law to overturn the February 3, 1982 Opinion by the U.S. Court of Appeals for the Fourth Circuit, that petitioner and millions of federal employees will suffer irreparably,

that Constitutionally guaranteed rights, especially free speech, privacy, liberty and property rights are lost, and that that Opinion of February 3, 1982 is Constitutionally unsound, unfair, and illegal, and to overturn it, and award petitioner, seeking a *Bivens* remedy, the two million dollars compensatory and punitive damages because of the extensive malice, and irreparable harm done to petitioner and his family, while petitioner tried to serve the public good and live up to his oath to God and Country, and the U.S. Constitution.

Any procedural errors that may have been made by petitioner *pro se* are respectfully asked to be waived, while appellant represents his Constitutional and states rights *pro se*, a condition beyond his control.

Respectfully,

/s/ Stanley C. MAZALESKI, *PRO SE*
3931 Sugarloaf Drive
Monrovia, Maryland 21770
(301) 831-9424

CERTIFICATE OF SERVICE AND NOTICE OF SERVICE

I, Stanley C. Mazaleski, Ph.D., certify that the original and forty copies of this Petition for Writ of Certiorari, dated July 13, 1982 and notarized July 13, 1982, were hand delivered to the Clerk, July 13, 1982, United States Supreme Court, Washington, D.C. 20543, and three copies mailed July 13, 1982, first class mail, postage prepaid, to the Solicitor General, Department of Justice, Washington, D.C. 20530.

/s/ STANLEY C. MAZALESKI, *PRO SE*